



**THE ATTORNEY GENERAL
OF TEXAS**

March 13, 1989

**JIM MATTON
ATTORNEY GENERAL**

Honorable Amado J. Abascal, III
District Attorney
P. O. Box 2426
Eagle Pass, Texas 78853-2426

LO-89-23

Dear Mr. Abascal:

You ask whether certain persons may serve on the board of directors of a hospital district. You explain that two physicians who maintain staff privileges at the hospital were elected to the Board of Directors of the Maverick County Hospital District. You describe the maintenance of "staff privileges" to mean that the doctors are entitled to admit patients to the hospital. The doctors receive no compensation from the hospital or the hospital district, nor does the district compensate the doctors' employees. The extension of staff privileges is the result of a process by the hospital's medical staff and confirmation by a vote of the board of directors. One doctor and the spouse of another doctor hold ownership interests in a separate outpatient facility, which employs as its administrator another director of the hospital district. The outpatient facility is a for-profit facility that receives no funds from the hospital but that has an agreement with the hospital concerning the shared use of instruments and an agreement for the emergency transfer of patients from the outpatient facility to the hospital.

Based on those facts, you ask the following four questions:

1. Are the physicians who maintain staff privileges at the Hospital barred by a conflict of interest and/or the doctrine of incompatibility from serving on the Board?

2. Does [one doctor's] ownership interest in the Out-Patient Facility bar him from serving on the Board due to a conflict of interest and/or due to the doctrine of incompatibility?

3. Does [one individual's] employment as the administrator of the Out-Patient Facility bar her from serving on the Board due to a conflict of interest and/or due to the doctrine of incompatibility?

4. If these Board members are not barred due to the doctrine of incompatibility from serving on the Board, then when must they abstain from discussing and voting on issues pending before the Board due to a conflict of interest?

We find no provisions in general law or in the district's enabling act (Acts 1965, 59th Leg., ch. 172, at 360, as amended by Acts 1981, 67th Leg., ch. 136, at 347) that would prohibit a director of the district from either maintaining staff privileges at the hospital or from working for or holding an ownership interest in a private health facility.

In our opinion, your concern about the doctrine of incompatibility is misplaced. The doctrine of incompatibility applies only to public offices or employments. The editors of Corpus Juris Secundum, in discussing the doctrine of incompatibility, have said:

The inconsistency of functions rendering offices incompatible lies in a conflict of interest. . . . Accordingly, a conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other.

67 C.J.S. Officers § 27, at 279, 280.

This office has said, "The common law doctrine of incompatibility prevents one person from accepting two offices where one office might thereby impose its policies on the other or subject it to control in some other way." Attorney General Opinion JM-129 (1984). While the directors identified in your inquiry do hold public offices, the situation as outlined in your letter does not indicate any dual public employment. The doctors only hold staff privileges at the hospital and are not employed by the hospital or by the

district. Similarly, the public office of director and a position of private employment with the outpatient do not come within the incompatibility rule.

Even though the doctors in question are subject to hospital district rules in their roles as doctors with staff privileges, we find nothing in the law that would prohibit doctors with staff privileges at a hospital district hospital from serving on the board of the hospital district. Accordingly, we answer your first three questions in the negative.

Your fourth question regards whether these board members should abstain from voting on matters pending before the board due to conflict of interest. Conflicts of interest of local officers are governed by chapter 171 of the Local Government Code. We do not have facts available to determine whether the individuals in question have an interest in the private facility that would require recusal on votes relating to the facility. See Local Gov't Code § 171.002.

Generally, chapter 171 requires local public officials to file affidavits stating their interest in a business entity and to abstain from further participation in a vote or decision on a matter involving the business entity in which the official has a substantial interest. Section 171.001 defines "Local public official" as "a member of the governing body . . . of any district." That definition includes directors of hospital districts.

If a director's interest in the private facility is a substantial interest as defined in section 171.002 of the Local Government Code, he or she would be required to file an affidavit declaring that interest and to abstain from further participation in a vote or decision involving the facility. However, we note that the legislature has made a special exception allowing officials to vote after filing an affidavit in cases where a majority of the members of a governmental entity are subject to the same disability, as may be the case in the Maverick County Hospital District. See Local Gov't Code § 171.004, as amended by Acts 1987, 70th Leg., ch. 323, at 1733; Acts 1987, 70th Leg., ch. 362 at 1798.

You do not indicate whether the doctors' staff privileges require renewal after a period of time. If those privileges need to be renewed, requiring another vote by the board of directors, the doctors may come within the prohibitions of chapter 171. Although that chapter is couched in

terms of "interest in a business entity," we conclude that the term "business entity" must include the official himself. Section 171.001(2) reads as follows:

(2) 'Business entity' means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. (Emphasis added).

Local Gov't Code § 171.001(2). Black's Law Dictionary defines "sole proprietorship" as follows:

A form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.

Black's Law Dictionary 1248 (5th ed. 1979).

We believe that the legislature intended for the term "sole proprietorship" to include exactly the type of business enterprise indicated by a doctor working as a sole practitioner. Therefore, if and when a doctor's or director's staff privileges are again subject to a vote of the board of directors, the director must file an affidavit and abstain from further participation in the matter according to the provisions of chapter 171 of the Local Government Code.

Very truly yours,



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KCG/SW/er
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